

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MIDWEST GRAIN PROCESSORS COOPERATIVE	DOCKET NO. P-846
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**PROPOSED DECISION AND ORDER GRANTING PERMIT**

(Issued May 10, 2002)

APPEARANCES:

MR. TODD J. GUERRERO, Attorney at Law, Lindquist & Vennum, P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN, 55402, and MR. RICHARD W. LOZIER, JR., Belin, Lamson, McCormick, Zumbach, Flynn, a Professional Corporation, 666 Walnut Street, Suite 2000, Des Moines, IA 50309, appearing on behalf of Midwest Grain Processors Cooperative.

MR. RON POLLE, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

**STATEMENT OF THE CASE**

On January 15, 2002, Midwest Grain Processors Cooperative (MGP) filed a petition for a permit to construct, operate, and maintain an approximately 1.86 mile 6-inch diameter steel pipeline for the transportation of natural gas in Kossuth County, Iowa. (petition for permit) MGP amended its petition on March 14 and March 20, 2002. (petition for permit) MGP filed a land restoration plan with its petition, and amended the plan on March 14, 2002. (land restoration plan; testimony of Mr. Schroeder) The proposed pipeline will provide natural gas service

to an ethanol plant that will be owned and operated by MGP. (petition for permit; Burnett report; testimony of Mr. Barber)

On March 12, 2002, the Iowa Utilities Board (Board) assigned this case to a presiding officer. A procedural schedule was established by an order issued on March 13, 2002. In that order, the presiding officer set May 15, 2002, as the date for the hearing on the petition. The date for hearing was subsequently changed to May 9, 2002. Also in that order, the presiding officer proposed to take official notice of a February 11, 2002, report concerning the pipeline prepared by Mr. Gary Burnett, a utility regulatory inspector for the Utilities Division's Safety and Engineering Section. MGP caused notice of the hearing to be published in Kossuth County in the Algona Upper Des Moines, a newspaper of general circulation in the county, on April 11 and 18, 2002. (affidavit of publication)

MGP filed prepared direct testimony of Mr. Brad Barber and Mr. Dan Schroeder on April 8, 2002.

The hearing was held on May 9, 2002 by telephone conference call. Mr. Brad Barber, development representative for MGP, and Mr. Dan Schroeder, vice-president, U.S. Energy Engineering, Inc. (U.S. Energy), testified on behalf of MGP. (testimony of Mr. Barber and Mr. Schroeder) Mr. Jeff O'Neal and Mr. Gary Burnett testified on behalf of the Board.

### **DISCUSSION OF THE EVIDENCE**

MGP seeks a permit to construct, operate, and maintain a new natural gas pipeline approximately 1.86 miles long in Kossuth County, Iowa. (petition for permit) The proposed pipeline will provide natural gas service to a 45-million gallons-per-year ethanol plant that will be owned and operated by MGP near Lakota, Iowa in Kossuth County. (petition for permit; Burnett report; testimony of Mr. Barber)

The proposed pipeline will be a 6-inch steel line approximately 1.86 miles long with a maximum allowable operating pressure (MAOP) of 270 psig. (petition exhibit C; Burnett report; testimony of Mr. Schroeder) The proposed pipeline will follow a route described in exhibit A attached to the petition for a permit (as amended). (petition for permit exhibit A) It will run from Northern Border Pipeline Company valve number 51 near Ledyard, Iowa, south along the west side of 160<sup>th</sup> Ave. in Kossuth County, then cross 160<sup>th</sup> Ave. to the ethanol plant. (petition for permit; testimony of Mr. Schroeder; Burnett report)

MGP has contracted with U.S. Energy to assist it with design and construction of the pipeline facilities, and has contracted with Iowa Pipeline Associates to construct the pipeline. (testimony of Mr. Schroeder) MGP has contracted with Aquila Inc., f/k/a UtiliCorp United Inc. to operate and maintain the pipeline. (testimony of Mr. Schroeder; petition exhibit F) All of these companies are experienced in the tasks for which they have been contracted. (testimony of Mr. Schroeder)

MGP is obligated to design, construct, operate, and maintain this pipeline in accordance with the standards adopted by reference at 199 IAC § 10.12(1), which include the federal natural gas pipeline safety standards found in 49 C.F.R. Part 192. Mr. Gary Burnett inspected the proposed pipeline route on February 6, 2002 per Iowa Code § 479.11(2001). (Burnett report) Mr. Burnett concluded that nothing was noted that would make the proposed route unacceptable or cause unusual construction problems. (Burnett report) Mr. Jeff O'Neal reviewed the MGP petition, exhibits, and prepared testimony, and concluded that the proposed pipeline meets all design, testing, and construction requirements. (testimony of Mr. O'Neal) MGP has corrected all deficiencies in the permit application and land restoration plan identified in a letter dated February 11, 2002 from Mr. Don Stursma to Mr. Barber. (testimony of Mr. O'Neal)

The pipeline meets all design, construction, and testing requirements. (petition for permit; testimony of Mr. O'Neal) MGP has obtained all required permits except one from the Iowa Department of Transportation. (testimony of Mr. Barber) It has also obtained all necessary easements, and has signed a necessary purchase agreement. (testimony of Mr. Barber) No objections or complaints have been filed by any landowners regarding the petition for permit. (docket file; testimony of Mr. O'Neal)

MGP owns non-pipeline property within the state subject to execution of a reasonable value in excess of \$250,000. (petition exhibit D; testimony of Mr. Barber)

MGP filed a land restoration plan with its permit, and amended the plan on March 14, 2002. (land restoration plan; testimony of Mr. Schroeder) The land restoration plan filed by MGP adequately addresses the land restoration issues specified in the land restoration statute and current board rules. (land restoration plan; testimony of Mr. Schroeder)

### **ANALYSIS**

Sections 479.12 and 479.26 of the Iowa Code apply to all petitions for pipeline permits. Section 479.12 provides that:

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company<sup>1</sup>, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

Iowa Code § 479.12. Section 479.26 requires any applicant for a pipeline permit to establish that it has property subject to execution within Iowa, other than pipelines, of a value greater than \$250,000, or it must file and maintain a surety bond of the same amount. The applicant may satisfy this requirement in any of several prescribed ways. Iowa Code § 479.26; 199 IAC §10.2(1)(d).

Together, these statutes generate four issues: (1) whether the services the petitioner proposes to render will promote the public convenience and necessity; (2)

whether it is just and proper to impose terms, conditions and restrictions involving safety requirements upon the permit; (3) whether it is just and proper to impose terms, conditions and restrictions as to location and route of the pipeline upon the permit; and (4) whether the petitioner has presented adequate proof of satisfactory financial condition.

First, the evidence shows that this proposed pipeline is necessary to provide natural gas service to an ethanol plant to be constructed in Kossuth County, Iowa. (petition for permit; Burnett report; testimony of Mr. Barber) Therefore, the service promotes the public convenience and necessity. (petition for permit; Burnett report; testimony of Mr. Barber)

Second, the evidence shows the proposed pipeline complies with the construction, safety and design requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; testimony of Mr. O'Neal; testimony of Mr. Schroeder) There is no reason to impose additional safety-related terms, conditions, and restrictions upon the permit. (petition for permit; testimony of Mr. O'Neal; testimony of Mr. Schroeder)

The third issue is whether terms, conditions, or restrictions as to location and route should be imposed. Iowa Code § 479.12. The evidence shows the location and route are reasonable and there is no reason the location or route of the pipeline

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<sup>1</sup> Although MGP is not actually a pipeline company, it is functioning as such in this docket, and therefore will be treated as if it were a pipeline company for the purposes of this statute.

should be changed, or that terms, conditions and restrictions regarding the location or route should be added to the permit. (petition for permit; Burnett report)

Finally, in accordance with Iowa Code § 479.26, MGP has satisfactorily demonstrated that it has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. (testimony of Mr. Barber; petition exhibit D)

Iowa Code § 479.29(9) provides that:

Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met.

The Board has adopted land restoration rules pursuant to this statute at 199 IAC Chapter 9. The land restoration plan filed by MGP adequately addresses the land restoration issues contained in Iowa Code §479.29 and 199 IAC Chapter 9. (land restoration plan; testimony of Mr. O'Neal, Mr. Schroeder)

### **FINDINGS OF FACT**

1. MGP is not a pipeline company within the meaning of Iowa Code § 479.2, but is functioning as such in this docket and will be treated as such for the purposes of this statute. (testimony of Mr. Barber, Mr. Schroeder)

2. On January 15, 2002, MGP filed a petition for a permit to construct, operate, and maintain approximately 1.86 miles of 6-inch diameter steel pipeline in Kossuth County, Iowa. (petition for permit; testimony of Mr. Schroeder; Burnett report) MGP amended its petition on March 14 and March 20, 2002. (petition for

permit) MGP filed a land restoration plan with its petition, and amended the plan on March 14, 2002. (land restoration plan; testimony of Mr. Schroeder)

3. MGP has contracted with U.S. Energy to assist it with design and construction of the pipeline facilities, and has contracted with Iowa Pipeline Associates to construct the pipeline. (testimony of Mr. Schroeder) MGP has contracted with Aquila Inc., f/k/a UtiliCorp United Inc. to operate and maintain the pipeline. (testimony of Mr. Schroeder; petition exhibit F) All of these companies are experienced in the tasks for which they have been contracted. (testimony of Mr. Schroeder)

4. MGP caused notice of the hearing to be published in Kossuth County in the Algona Upper Des Moines, a newspaper of general circulation in the county, on April 11 and 18, 2002. (affidavit of publication) MGP filed proof of payment of the costs of publication of these notices as required by Iowa Code § 479.13 and 199 IAC § 10.4. (affidavit of publication)

5. This pipeline is necessary to provide natural gas service to an ethanol plant to be constructed in Kossuth County, Iowa. (petition for permit; Burnett report; testimony of Mr. Barber) Therefore, the service promotes the public convenience and necessity as required by Iowa Code § 479.12. (petition for permit; Burnett report; testimony of Mr. Barber)

6. The pipeline complies with the construction, safety and design requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192.

(petition for permit; testimony of Mr. O'Neal and Mr. Schroeder) No further terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12.

7. The location and route of the proposed pipeline is reasonable and no further terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; Burnett report)

8. MGP has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000, as required by Iowa Code § 479.26 and 199 IAC § 10.2(1)(d). (testimony of Mr. Barber; petition exhibit D)

9. No objections to the petition for a permit were filed. (testimony of Mr. O'Neal; docket file)

10. MGP filed a land restoration plan that adequately addresses all land restoration issues contained in Iowa Code §479.29 and 199 IAC Chapter 9. (land restoration plan; testimony of Mr. Schroeder)

### **CONCLUSIONS OF LAW**

1. The Board has the authority to grant, amend, and renew permits for the construction, operation, and maintenance of pipelines for the intrastate transportation of natural gas. Iowa Code §§ 479.1, 479.4, 479.12 and 479.18; 199 IAC § 10.7.

2. The Board has jurisdiction over MGP and over the petition for a natural gas pipeline permit it has filed. Iowa Code §§ 479.2, 479.5, 479.6, 479.12 and 479.18.

3. The petition of MGP for issuance of a permit for the natural gas pipeline in Docket No. P-846 should be granted. Iowa Code §§ 479.11, 479.12, 479.26, and 479.29; 199 IAC Chapters 9 and 10.

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated February 11, 2002, filed in this docket by Mr. Gary Burnett, utility regulatory inspector for the Board.

2. Pursuant to Iowa Code Chapter 479, the petition for a pipeline permit filed by MGP in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. MGP must comply with the land restoration plan it filed with the petition (as amended) and the provisions of Iowa Code § 479.29 and 199 IAC Chapter 9.

4. MGP must provide timely notice to the Utilities Division before beginning construction of the pipeline, and must also file weekly progress reports during construction of the pipeline with the Utilities Division.

5. After MGP completes construction of the new pipeline, it must file a construction completion report with the Utilities Division. This report must include information regarding any unusual construction problems or occurrences, and a copy of the pressure test procedures used and the results obtained.

6. Within 180 days after completion of the construction of the new pipeline, MGP must file a map that accurately shows the location of the pipeline route as constructed. The map will be a part of the record in this case, and will represent the final route as authorized by the permit.

7. The Board retains jurisdiction of the subject matter in this docket.

8. Ordinarily, this proposed decision would become the final decision of the Board unless appealed to the Board within 15 days of its issuance. Iowa Code § 17A.15(3); 199 IAC § 7.8(2). However, under appropriate circumstances, it is possible to reduce the time for appeal. 199 IAC 1.3, 7.8(2); Iowa Code §17A.15(3). MGP has requested expedited treatment of this case so it can proceed with construction. No objections to this petition were filed. The Consumer Advocate Division of the Department of Justice does not object to a reduced appeal period. There are no unresolved issues that indicate a need for the 15-day appeal period. **Therefore, this proposed decision will become the final decision of the Board unless appealed to the Board within five (5) days of its issuance.**

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 10<sup>th</sup> day of May, 2002.